

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND, NORTHERN DIVISION

In re: *

BARBARA ANNE SLAVINSKI, * CASE NO. 04-29057SD

Debtor * (Chapter 7)

* * * * *

BARBARA ANNE SLAVINSKI *

Appellant, *

v. * ADVERSARY NO: 04-2115SD

EDUCATIONAL CREDIT MANAGEMENT * CIVIL NO.: WDQ-06-1737

CORPORATION *

Appellees *

* * * * *

MEMORANDUM OPINION

Barbara Slavinski, *pro se*, has moved for: 1) leave to appeal the United States Bankruptcy Court's June 21, 2006, dismissal of her complaint to determine the dischargability of her student loan debt; and 2) two extensions of time to file her notice of appeal. Slavinski has also requested to proceed without prepayment of fees or costs. Educational Credit Management Corporation ("ECMC") has moved to strike Slavinski's appeal.

For the following reasons, Slavinski's motion for leave to appeal will be granted; her motions for an extension of time will be denied as moot. Slavinski's application to proceed without prepayment of fees and costs will be granted. ECMC's motion to

strike Slavinski's appeal will be denied.

I. Background

In August 2004, Slavinski filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court"). In October 2004, Slavinski sued Educational Credit Management Corporation in the Bankruptcy Court to discharge her student loans. On June 21, 2006, the Bankruptcy Court dismissed Slavinski's complaint.

On June 22, 2006, Slavinski moved for leave to appeal the Bankruptcy Court's order. ECMC has opposed and moved to strike Slavinski's appeal, arguing that Slavinski failed to file a notice of appeal as required by Federal Rule of Bankruptcy Procedure 8001. On July 12, 2006 and July 25, 2006, Slavinski moved for extensions of time to file her notice of appeal.

II. Analysis

Under Federal Rule of Bankruptcy Procedure 8001(a), "an appeal from a judgment, order, or decree of a bankruptcy judge to a district court...shall be taken by filing a notice of appeal with the clerk." FRBP 8001(a). The notice of appeal must

- (1) conform substantially to the appropriate official form,
- (2) contain the names of all parties to the judgment, order or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, and
- (3) be accompanied by the prescribed fee.

Id.

Under Rule 8001(b), "an appeal from an interlocutory judgment, order, or decree of a bankruptcy judge...shall be taken by filing a notice of appeal... accompanied by a motion for leave to appeal."

As the Bankruptcy Court dismissed her complaint, Slavinski should have appealed that court's decision by filing a notice of appeal in accordance with Rule 8001(a). Instead, Slavinski moved for leave to appeal (as required for an appeal of an interlocutory judgment under Rule 8001(b)). ECMC contends that her failure to file a notice of appeal bars her appeal.

Slavinski's motion for leave to appeal, however, put ECMC on notice that she intended to appeal the Bankruptcy Court's dismissal of her complaint and, therefore, will be deemed to have been her notice of appeal. Accordingly, Slavinski's motion for leave to appeal will be granted¹ and her motions for an extension of time denied as moot. ECMC's motion to strike Slavinski's appeal will be denied.

Upon review of her application the Court will grant

¹In accordance with Rule 8009, appellant's brief is due 15 days after entry of the appeal on the docket.

Slavinski's application to proceed without prepayment of fees and costs.

July 26, 2006
Date

/s/
William D. Quarles, Jr.
United States District Judge